IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1695 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FARIDKHAN @ FIROZKHAN SADIK KHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR II SHAIKH for Petitioner

MR RC KODEKAR, Ld AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2001

ORAL JUDGEMENT

1. Heard learned advocate Mr.I. I. Shaikh on behalf of the petitioner and learned AGP Mr.R. C. Kodekar on behalf of the respondent - State.

2. In the present petition under Article 226 of the Constitution of India, the petitioner has challenged the

order of detention dated 20th October, 2000 passed by the Police Commissioner, Ahmedabad City. In the present petition, the affidavit-in-reply has been filed by the respondent State.

3. The learned advocate Mr.I.I.Shaikh on behalf of the petitioner has challenged the order of detention dated 20th October, 2000 passed by the Police Commissioner, Ahmedabad City on various grounds, but he raised mainly two contentions; first is that at the time of passing the order of detention, the petitioner was in judicial custody as mentioned in para-(11) of the petition. Therefore, he has relied upon the two decisions of the Apex Court in the case of Ramesh Yadav v/s. District Magistrate Etah and others, reported in 1985 Supreme Court Cases (Criminal) 514 and in the case of Amritlal and others v/s. Union Government, through Secretary, Ministry of Finance and others, reported in 2001 (1) Supreme Court Cases 341. The second contention is that co-detenu Shri Rajiv @ Kishor Upendranath Shukla has been released by this Court in Special Civil Application No.12335 of 2000 decided on 14th February, 2001 (Coram : S. K. Keshote,J.).

4. Learned AGP Mr.R. C. Kodekar on behalf of the respondent - State has considered the order passed by this Court in case of co-detenu dated 14th February, 2001 and verified the same and agree to the submission made by the learned advocate for the petitioner that the co-detenu has been released by this Court, while setting aside the detention order, in the aforesaid Special Civil Application No.12335 of 2000.

5. In Special Civil Application No.12335 of 2000, the order dated 14th February, 2001 was passed by this Court, wherein this Court has observed that the learned advocate for the respondents is in agreement that this matter is squarely covered on one point by judgment of this Court in the case of Ranubhai Bhikhabhia Bharwad (Vekaria) v. State of Gujarat & Ors., reported in 2000 (3) GLR 2696. This fact has been verified by the learned AGP Mr.Kodekar and he is also in agreement that the present matter is also squarely covered by the aforesaid decision of this Court reported in 2000 (3) GLR 2696 and, therefore, considering the decision of co-detenu dated 14th February, 2001 and considering the decision of this Court reported in 2000 (3) GLR 2696, this petition is required to be allowed.

6. According to my opinion the order of detention passed against the petitioner is vitiated. In view of

the above submission made by the learned advocate for the petitioner, this petition succeeds and the same is allowed. The order of detention dated 20th October, 2000 is vitiated and resulted to quash and set aside. The detenu - Faridkhan @ Firozkhan Saidkhan Pathan who has been detained at present in Surat Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H. K. Rathod, J.)

(vrpanchal)*